

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAPHNE RICHARD, ET AL.

Plaintiff,

v.

GLENS FALLS NATIONAL BANK,

Defendant.

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Case No. 1:20-CV-00734-BKS-DJS

DEFENDANT’S RESPONSE TO COURT’S ORDER TO SHOW CAUSE

Defendant Glens Falls National Bank and Trust Company (“Glens Falls”) respectfully submits this response to this Court’s January 20, 2021 Order to Show Cause (“OSC”) (ECF 23) and Plaintiff Daphne Richard’s (“Plaintiff”) Memorandum and exhibits in response to this Court’s Order to Show Cause (ECF 24).

As this Court noted in the OSC, the party asserting federal court jurisdiction bears the burden of establishing that the case is properly in federal court. *See Anirudh v. CitiMortgage, Inc.*, 598 F. Supp. 2d 448, 450-51 (S.D.N.Y. 2009) (*citing DiTolla v. Doral Dental IPA of N.Y., LLC*, 469 F.3d 271, 275 (2d Cir. 2006)). Plaintiff asserts jurisdiction under the Class Action Fairness Act, 28 U.S.C. §§ 1332(d)(2) and (6), and alleges that (1) the proposed Class in this matter is comprised of at least 100 members, (2) at least one member of the proposed Class resides outside of the State of New York, and (3) if the proposed Class is ultimately certified, the aggregate claims of the members of the proposed Class will exceed \$5 million, exclusive of interest and costs. *See* Paragraph 12, Proposed First Amended Class Action Complaint (“PFAC”) (ECF 24-2).

For purposes of the OSC, and specifically this Court’s determination of whether the PFAC sufficiently pleads subject-matter jurisdiction, Defendant does not contest Plaintiff’s allegations in paragraph 12 of the PFAC. For any other purpose, Defendant denies that Plaintiff is entitled to

any relief whatsoever relating to the claims raised in her Complaint or PFAC, denies that the class members' claims will exceed \$5 million, and denies that any classes presented in the Complaint or PFAC can be certified under Rule 23.

Dated: February 17, 2021

Respectfully Submitted,

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*Attorneys for Defendant Glens Falls
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CERTIFICATE OF SERVICE

I hereby certify that February 17, 2021, a true and correct copy of the foregoing was filed with the Clerk of Court, to be served via the Court's ECF system on all counsel of record.

/s/ Dana M. Hass

Dana M. Hass